

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION TWENTY-FIVE

Indianapolis, IN

JBM, INC., d/b/a BLUEGRASS SATELLITE<sup>1</sup>  
Employer

and

Case 25-RC-10327

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,  
LOCAL 135  
Petitioner

and

THE PRODUCTION WORKERS UNION,  
LOCAL 707, NPW  
Intervenor

DECISION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held February 13, 2006, before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board, to determine an appropriate unit for collective bargaining.<sup>2</sup>

I. ISSUES

International Brotherhood of Teamsters, Local 135 (the "Petitioner") seeks an election within a unit comprised of all full-time and regular part-time technicians, clerks, and trainers employed by JBM, Inc., d/b/a Bluegrass Satellite (the "Employer") at its Indianapolis, Indiana facility. The Petitioner contends these employees comprise an appropriate bargaining unit. However, the Employer maintains the only appropriate unit is a multi-facility unit, which

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<sup>1</sup> The name of the Employer appears as amended at hearing.

<sup>2</sup> Upon the entire record in this proceeding, the undersigned finds:

- a. The hearing officer's rulings made at the hearing are free from error and are hereby affirmed.
- b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
- c. The labor organization and Intervenor involved claims to represent certain employees of the Employer.
- d. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

includes fourteen facilities in Illinois, Indiana, Iowa, Kentucky, and Ohio,<sup>3</sup> comprised of all head area technicians, working team leaders, technicians, clerks, and trainers. The Petitioner contends that head area technicians and working team leaders are supervisory employees within the meaning of Section 2(11) of the Act and must be excluded from the unit.

## II. DECISION

For the reasons discussed in detail below, it is concluded that no compelling circumstances exist warranting disturbing the established multi-facility bargaining history between the Employer and the Intervenor. Therefore, the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time technicians, trainers, and clerks employed by the Employer at all its Illinois, Indiana, Iowa, Kentucky, and Ohio facilities(excluding the Columbus, Ohio facility); BUT EXCLUDING all sales employees, professional employees, guards and supervisors as defined in the Act, and all other employees.

The unit found appropriate herein consists of approximately 800-900 employees.

## III. STATEMENT OF FACTS

### A. Overview of Operations

The Employer, a Kentucky corporation with a facility located in Indianapolis, Indiana, is engaged in the installation and service of DirecTV satellite systems. Approximately 900 employees work at the Employer's fifteen facilities in five different states and each facility installs and services DirecTV satellite systems. All fifteen facilities have the same job classifications—head area technicians, working team leaders, trainers, technicians, and clerks. The largest classification is the technicians, which consists of 796 employees. All fifteen facilities operate year round, with peak seasons running from April through August and during the month November.

The Employer's facilities are divided into two regions—east and west. The distance between the Indianapolis facility and other facilities varies, with distances as close as 110 (Louisville), 112 (Cincinnati), and 157 miles (Elizabethtown) from the Indianapolis facility, and as far as 314 (Davenport), 317 (Cleveland), and 346 miles (Youngstown) away from the Indianapolis facility. Maysville, Kentucky is the Employer's corporate office, and the three closest facilities to the corporate office are 60 (Cincinnati), 64 (Lexington), and 132 miles (Louisville) away, and the three furthest are 303 (Youngstown), 344 (Bloomington), and 480

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<sup>3</sup> The relevant warehouse facilities are in Illinois (1)—Bloomington; Indiana (2)—Evansville and Indianapolis; Iowa (1)—Davenport; Kentucky (4)—Elizabethtown, Lexington, London and Louisville; and Ohio (6)—Cincinnati, Cleveland East, Cleveland West, Edison, Wilmington, and Youngstown.

miles (Davenport) from the corporate office. The Employer's personnel files, pay sheets, fringe benefits, compliance matters, and administrative procedures are centralized at its corporate office. The Employer maintains a Policy Manual that covers its employees in the corporate office and at all of its facilities.

### B. Bargaining History

The Employer is a party to a collective bargaining agreement between the Intervenor and a multi-employer association called the National Workers Master Contract Group with effective dates of April 1, 2003 through March 30, 2006.<sup>4</sup> In addition, the Employer and the Intervenor have negotiated an addendum to this master agreement which provides wages, benefits and terms and conditions of employment for unit employees at all of its facilities, including Indianapolis. A later addendum was also reached by the Employer and the Intervenor which provides that the Employers Employee Stock Option Plan was not in violation of the contract and approves the initiation of the plan. Although it was not offered into evidence, the record indicates that the Employer and Intervenor previously entered into a recognition agreement sometime prior to November 2002. The collective bargaining agreement initially covered all fifteen of the Employer's facilities, but the employees from the Columbus, Ohio facility were removed from the multi-facility unit shortly after the Employer and Intervenor signed the collective bargaining agreement. The United Electrical, Radio, and Machine Workers of America (UE) currently represent employees at the Columbus facility. This representation came about pursuant to a settlement agreement reached involving a series of unfair labor practice charges filed by the UE. There is no evidence of any prior history of collective bargaining on a single facility basis at any of the Employer's facilities, including Indianapolis.

The record further indicates that during the course of their current collective bargaining agreement there have been grievances both filed and resolved by the Employer and the Intervenor at the various facilities, including Indianapolis. In addition, there have been some grievances where the Employer and Intervenor have been unable to resolve and therefore have moved to the arbitration process.

### C. Operation of the Employer's Facilities

At each facility the Employer employs technicians, clerks, trainers, working team leaders and head area technicians. The parties have agreed that the technicians, clerks, and trainers share a sufficient community of interest to be included in the appropriate unit. The employees' job classifications and functions are identical throughout all facilities. There is little evidence explaining the clerks' and trainer's job duties. There is, however, evidence that clerks' and trainers' duties are similar from facility to facility. Technicians at the fifteen facilities install and service DirecTV satellites and have the same training and the same minimal certification. Technicians typically perform their duties alone, but there are occasions when they work with other technicians—during busy periods or for training purposes. The evidence demonstrates technicians receive their assignments from a working team leader via facsimile the night before

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<sup>4</sup> There is some record testimony that the Employer and Intervenor were parties to a collective bargaining agreement effective prior to the 2003-2006 agreement, however, the record is unclear on this point, including whether such an agreement covered the Indianapolis facility.

the assignments are scheduled to be completed. The technicians report to the facility once a week, but check in with the Employer's facility by telephone on a daily basis to ascertain changes in their assigned workloads and learn of cancelled assignments. The evidence suggests technicians pick up necessary equipment and attend meetings during the day they report to the facility. Technicians are paid on a per-job basis while clerks and trainers are paid on an hourly wage.<sup>5</sup> All of the technicians, clerks and trainers at the various facilities receive the same wages and benefits as set forth in the collective bargaining agreement.

The Employer moves employees from one facility to another based on DirecTV's marketing and the number of jobs in a specific area. This decision to temporarily transfer employees to work in another facility's geographic area is made by the Employer at the corporate level and not by the individual facilities. The Employer's daily route sheets provide technician numbers and the number of jobs assigned to each technician. The daily route sheets generated by the Employer for June 17, 2005 and August 15-16, 2005 indicate technicians receiving assignments in the Indianapolis area were from other facilities. The June 17, 2005 route sheet indicates 14 of the 68 technicians receiving assignments in the Indianapolis area were from other facilities—six from Louisville and eight from Cincinnati. The August 15, 2005 route sheet indicates 5 of the 55 technicians receiving assignments in the Indianapolis area were from other facilities—four from Cincinnati and one Louisville. The August 16, 2005 route sheet indicates 12 of the 64 technicians working in the Indianapolis area were from other facilities—five from Louisville and seven from Cincinnati. The Director of Resources also testified that Indianapolis employees are assigned to work in Louisville and Bloomington, IL, but route sheets demonstrating these assignments were not provided.<sup>6</sup> In addition, an Indianapolis technician testified that during the busy months he periodically observed technicians from other facilities working out of the Indianapolis facility.

Technicians, when assigned to areas outside of their home facility, are not required to report to the facility in the area in which they are working. The trucks assigned to technicians hold about two days worth of equipment. A technician away from his or her home facility for more than two days would need to obtain equipment at the nearest facility and turn in paperwork for completed jobs to the facility in which the work was performed.

#### D. Supervision

The parties stipulated that a number of Employer wide positions are supervisors within the meaning of Section 2(11) of the Act and should be excluded from the bargaining unit.<sup>7</sup> According to the Employer's current organizational structure, two Area Managers are ultimately responsible for all of the Employer's facilities. In addition, each of its facilities is staffed by at least one head area technician and an unknown number of working team leaders.

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<sup>5</sup> The record does not reflect what the exact hourly rate of the clerks and trainers.

<sup>6</sup> A route sheet for Columbus, Ohio was provided but not considered, as the Columbus facility employees are represented by the United Electrical Radio and Machine Workers of America., and this facility is not at issue here.

<sup>7</sup> These positions are Safety and Compliance Manager, Area Manager, Field Inventory Manager, Operations General Manager, Controller, Payroll and Human Resource Managers, Treasurer, individuals of the Special Projects, Technical Director, Sales Director, Director of Resources, the President and any member on the Board of Directors

The record does not reflect the total number of head area technicians and working team leaders at the Employer's various facilities. However, there is one head area technician and five working team leaders at the Indianapolis facility. Generally, the head area technicians report to one of the two area managers and are charged with making sure the work in their areas are completed by a technician on the day the work is assigned. Head area technicians are paid a base salary of six-hundred dollars (\$600) a week, and are also compensated for every installation or service related job he or she is required to complete, which is only necessary when a technician or working team leader is unavailable to perform the job. Working team leaders have similar responsibilities as the head area technicians and are also charged with making sure the work is completed. Working team leaders, like head area technicians, are paid a base salary. The base salary of working team leaders is four hundred-fifty dollars (\$450) a week. Working team leaders, like the head area technicians, are also compensated for every job performed performs. According to the Employer, working team leaders are paid a lower base salary than head area technicians because they have more opportunities to perform installation and service jobs and receive additional compensation. Head area technicians and working team leaders are the only two classifications, assigned to work in one of the fifteen facilities, who receive a base salary.

The Employer maintained Policy Manual makes many references to "supervisor", however it does not identify to which classifications the term "supervisor" refers. For example, the Policy Manual requires employees to notify their supervisor for most leave requests, and requires a supervisor's approval to take a day off without pay to attend a funeral. All overtime, according to the Policy Manual, must be approved in advance by either a supervisor or head area technician after consulting with an area manager. The Policy Manual also directs employees to report all forms of harassment to their supervisor or to the Payroll and Human Resources Manager.

Very little specific evidence was presented at the hearing regarding the working team leaders and head area technicians day to day duties and authority. The only specific evidence concerning the duties of the working team leaders and head area technicians relates to those positions at the Indianapolis facility. At the Indianapolis facility there are five working team leaders who are each assigned up to 20 technicians. According to a technician employed at the Indianapolis facility, it is the working team leaders who assign the daily work and make adjustments to workloads. The technician has witnessed a working team leader make adjustments to work assignments upon the request of technicians. According to the technician the working team leader did not consult with anyone prior to changing the assignments. This same technician, however, testified that the working team leaders routed the work and then he believed they sent it to the corporate offices in Maysville, Kentucky. He testified that it was from the corporate offices in Maysville that the technicians received their routes by fax each evening. The record does not indicate what, if any, changes are made by the corporate offices. In Indianapolis, the working team leaders hold weekly meetings with their assigned technicians in order to discuss job responsibilities and any updates or new training. Some evidence was presented regarding a technician from Indianapolis who was issued a written verbal warning by a working team leader for failure to run phone lines at a customer's house and failing to close out a job. According to the technician he was issued such discipline immediately after the alleged infraction at which time he signed the warning and his working team leader signed the warning.

The warning also contained a space for the head area technician to sign the warning. A copy of this warning was not entered into evidence and there was no evidence adduced at hearing regarding what ramifications, if any the employee suffered as a result of this “warning”. The record testimony also indicates that at the Indianapolis facility, technicians receive approval to take time off from their working team leaders and/or the head area technician. Upon presentation of the request, the working team leaders and/or head area technician sign the request form and oftentimes the technician then sends it to the Employer’s centralized payroll office.

#### IV. DISCUSSION

##### A. Single vs. Multi-Facility Unit

The Petitioner seeks a unit of all full and regular part-time technicians, clerks, and trainers employed only at the Employer's Indianapolis, Indiana facility. The Employer asserts, however, that only a unit that includes those facilities covered by its agreement with the Intervenor is appropriate.

The Board normally will not disturb a historical multi-facility unit absent compelling circumstances. *Met Electrical Testing Company*, 331 NLRB 872 (2000). The party challenging a historical unit bears the burden of showing the unit is no longer appropriate, and this burden is a heavy one. *Id*; *See also P.J. Dick Contracting* 290 NLRB 150, 151 (1988). In order to destroy the appropriateness of a historical multi-facility unit, such as the unit in this case, there must be “compelling circumstances” for disregarding the bargaining history on a multi-facility basis. *Met Electrical*, supra. The Board has found this to mean that the historical unit must no longer conform reasonably well to normal standards of appropriateness. *Rock-Tenn Company*, 274 NLRB 772 (1985). In the instant case, Petitioner has not demonstrated compelling circumstances that warrant the disturbance of the multi-facility bargaining history.

The Employer and the Intervenor are parties to a collective bargaining agreement with effective dates of April 1, 2003 through March 30, 2006. The addendums to this agreement clearly indicate that it is a multi-facility unit. The Employer and the Intervenor have bargained on a multi-facility basis since sometime in 2002 which included the Indianapolis facility at least by the 2003 agreement. The Petitioner argues that the length of the Employer and Intervenor’s bargaining history on a multi-facility basis falls short of the types of relationships the Board has refused to disrupt in such cases as *Arrow Uniform Rental*, 300 NLRB 246 (1990) (8-year bargaining relationship between incumbent union and employer). The Petitioner also emphasizes that unlike the multi-facility units in *Arrow Uniform Rental* and *Met Electrical*, the Intervenor was not certified subsequent to Board conducted election. In balancing the goals of employee free choice and bargaining stability, the Board has determined that even a one-year bargaining history on a multi-employer basis can be sufficient to bar a petition seeking an election in a segment of that unit. *Met Electrical*, 331 NLRB 872 (2000). The Employer and the Intervenor’s bargaining relationship is approaching its three-year anniversary, and the Employer and the Intervenor both oppose the establishment of any unit other than a multi-facility unit. Further, the Board has found that it is not appropriate to accord less weight to the factor of bargaining history if the historical unit was never certified. *See Trident Seafoods, Inc.*, 318

NLRB 738, 739 (1995). In addition, Petitioner cites *Long Transportation Company*, 181 NLRB 7 (1970) in support of its arguments challenging the appropriateness of the historical multi-facility unit in the instant case. The Board's findings in *Long Transportation* do not impact the finding here that the historical unit is appropriate. In *Long Transportation* the Board found that there was no contract bar to an election where the employer and intervening union had extended a master agreement to cover clerical employees who had never been represented by the intervening union absent verification of majority status. This case is distinguishable in that the extension of the master agreement to the unrepresented group of employees in a single facility was mere months before the filing of the petition by another union.

The Petitioner also raises questions surrounding the validity of the Employer's recognition of the Intervenor as the majority representative of employees, claiming that there is no evidence that the recognition was accompanied by a showing of majority support. Such an argument is not properly raised in this proceeding. As the recognition occurred more than six months ago, it must be deemed lawful. See *Gibbs & Cox, Inc.*, 283 NLRB 953, 967 fn. 21 (1986); *Laborers (Roman Stone Construction)*, 153 NLRB 659 (1965). The fact that bargaining is currently taking place on a single facility level at the Employer's Columbus, Ohio facility is not fatal to a finding that the multi-facility bargaining history is controlling. The recognition extended to the UE regarding the Columbus, Ohio facility was pursuant to a settlement agreement, which cannot be viewed as an admission that any recognition by the Employer of the Intervenor was unlawful. *Douglas-Randall, Inc.*, 320 NLRB 431, 433 (1995). Indeed, with the exception of the Columbus, Ohio facility there is no evidence of any history of bargaining on a single facility basis at any of the facilities, including Indianapolis. As the one challenging the appropriateness of a historical unit, the Petitioner has not met its burden as it has not demonstrated any compelling reason to disturb such a unit. *Met Electric*, supra, *Trident Seafoods*, 318 NLRB 738 (1992); *Children's Hospital*, 312 NLRB 920, 929 (1993); *P.J. Dick Contracting*, 290 NLRB 150, 151 (1988).

Admittedly, while the petitioned for single facility unit may also be *an* appropriate unit, the existing multi-facility unit is also an appropriate unit and the bargaining history between the Employer and Intervenor is controlling in the instant case. The employees' job classifications and functions are similar throughout all fourteen of the Employer's facilities. Technicians, clerks and trainers all appear to perform similar, if not identical, duties throughout the Employer's facilities. All employees receive or are offered the health plan, dental plan, prescription drug insurance, life insurance, employee stock options, and vacation days. In addition wages throughout the Employer's facilities are similarly governed by the current contract between the Employer and Intervenor. The record evidence demonstrates that on occasion technicians from the Employer's Louisville facility and Cincinnati facility have performed work within the Indianapolis facility's area. It appears however, that on these occasions the technicians may not have a need to report to the Indianapolis facility and would not necessarily interact with employees from the Indianapolis facility. The record does not indicate to what extent there are temporary transfers between and among the Employer's other facilities. However, it also does not appear the technicians at the Indianapolis facility have much contact amongst one another, as they spend most of their time in the field.

There are approximately 900 employees at the Employer's fifteen facilities, which are divided into an eastern and western area with one area manager for each area. The Employer stated there is no on-site supervisor of the employees at any of its facilities it proposes to be in the multi-facility unit. The Director of Resources testified all of its facilities are supervised on a daily basis by one of two area managers, who rotate between facilities every two to three days. The area manager, however, is expected to have weekly conference calls with head area technicians, working team leaders, and quality control employees at each facility. The evidence does not demonstrate head area technicians and working team leaders cover more than one facility, but the area managers are charged with being responsible for more than one facility. Admittedly, there is a substantial distance between the Employer's facilities included in the historical multi-facility unit. Indeed, there are only four trips, when traveling between the facilities in the western area, that are less than 100 miles apart,<sup>8</sup> most of the distances between the facilities are well over 100 miles apart, with many over 300 to 400 miles apart.<sup>9</sup> However, the Board has held that geographic separation does not constitute compelling circumstances sufficient to override a historical multi-facility unit. See *Trident Seafoods, Inc.*, 318 NLRB 738, 740 (1995), *Capital Coors Co.*, 309 NLRB 322 (1992). The multi-facility bargaining relationship and the Employer's centralized administration and control over the labor relations policies, through its common Policy Manual, at the fourteen facilities overcomes the significant distances between the Employer's facilities.

Thus, while a single facility unit may also be an appropriate unit, these factors do not negate the appropriateness of the historical multi-facility unit. Based on the foregoing, it is concluded that technicians, clerks, and trainers Employer-wide, excluding the Columbus, Ohio facility, constitute a unit appropriate for the purpose of collective bargaining.

#### B. Supervisory Status of the Head Area Technicians and Working Team Leaders

The Petitioner asserts that the Employer's Indianapolis head area technician and working team leaders are supervisors within the meaning of the Act. The Employer counters that none of the head area technicians and working team leaders, at its facilities, are supervisors, but instead share a community of interest with the remainder of the proposed bargaining unit, and therefore should be included in any unit found appropriate.

To determine whether an individual is a supervisor within the meaning of Section 2(11) of the Act, the Board examines: (1) whether the individual has the authority to engage in any one of the twelve enumerated powers listed in Section 2(11) of the Act and (2) whether the exercise of such authority requires the use of independent judgment. *NLRB v. Kentucky River*

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<sup>8</sup> All of which are between facilities within the state of Kentucky: Louisville to Elizabethtown (44 miles); Louisville to Lexington (77 miles); Lexington to London (75 miles); and Lexington to Elizabethtown (85 miles)

<sup>9</sup> Distances from Indianapolis:—Louisville (110); Elizabethtown (157); Bloomington (178); Lexington (188); Evansville (223); London (261); and Davenport (314). Distances from Davenport:—Bloomington (137); Indianapolis (314); Louisville (420); Evansville (421); Elizabethtown (465); Lexington (496); and London (568). Distances from Evansville:—Elizabethtown (133); Lexington (195); Indianapolis (223); London (267); Bloomington (285); and Davenport (421). Distances from Bloomington:—Davenport (137); Indianapolis (178); Louisville (284); Evansville (285); Elizabethtown (329); Lexington (360); and London (432).



*Community Care*, 532 U.S. 706 (2001); *NLRB v. Health Care & Retirement Corp.*, 511 U.S. 571, 573-574 (1994). The twelve powers set forth in the definition of a supervisor in Section 2(11) of the Act are the authority to “hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees or responsibly direct them, or to adjust their grievances, or effectively recommend such action.”

The burden of proof regarding an individual’s supervisory status rests upon the party alleging that an individual is a supervisor. *Kentucky River*, 532 U.S. 706 (2001); *Bennett Industries*, 313 NLRB 1363 (1994). Lack of evidence is construed against the party asserting supervisory status. The Board is reluctant to confer supervisory status too broadly because an employee deemed to be a supervisor loses the protection of the Act. *Vencor Hospital–Los Angeles*, 328 NLRB 1136, 1138 (1999). The Board has found that a particular indicia of supervisory status has not been established if the evidence is in conflict or otherwise inconclusive regarding that indicia. *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989). Mere inferences or conclusive statements without detailed, specific evidence of independent judgment are insufficient to establish supervisory authority. *Sears Roebuck & Co.*, 304 NLRB 193 (1991).

Based on the record evidence it is not possible to determine the 2(11) status of all of the working team leaders and head area technicians throughout the Employer’s facilities which comprise the unit found appropriate herein. The record contains only general evidence of the authority possessed by the working team leaders and head area technicians as a group. The only specific evidence elicited by the parties concerned the working team leaders and head area technician at the Indianapolis facility. Should the Petitioner elect to proceed in an election in the larger multi-facility unit and upon a sufficient showing of interest, I will order the record in this case to be re-opened in order to receive evidence as to the 2(11) status of the head area technicians and working team leaders at all facilities which comprise the unit found appropriate herein.

## V. SHOWING OF INTEREST

Since this Decision enlarges the petitioned-for unit the Petitioner shall have fourteen (14) days from the date of his Decision in which to submit to Region 25 a showing of interest in the multi-facility unit found appropriate herein. See *Brown Transport Corp.*, 296 NLRB 1213 (1989); *Casale Industries, Inc.*, 311 NLRB 951 (1993).

## VI. CONCLUSION

Based on the above, absent a sufficient showing of interest in the appropriate unit by the Petitioner within the time period described above the instant petition will be dismissed by subsequent order. Further, should the Petitioner provide a sufficient showing of interest in the unit found appropriate herein, the record will be re-opened by subsequent order for the purpose of receiving evidence as to the 2(11) status of the head area technicians and working team leaders at the Employer’s facilities included in the unit.

## VII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099-14th Street. N.W., Washington, DC 20570. This request must be received by the Board in Washington by **March 24, 2006**

SIGNED at Indianapolis, Indiana, this 10<sup>th</sup> day of March 2006.

/s/ Rik Lineback

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